case of libel which justifies the Court to interfere promptly.

The principle of law governing application for interlocutory injunction laid down in *Stratford* v. *Lindley*[4] has now been superseded by the recent decision of the House of Lords in *American Cyanamid Co.* v. *Ethicon Ltd.*[5] According to the latter case, the question is no longer whether the plaintiff has made out a *prima facie* case but, whether there is a serious question to be tried. If there is, the *status quo* must be preserved. Lord Diplock in delivering judgment of the House in that case said — p. 510: —

"The use of such expressions as 'prohibitory,' 'a *prima facie* case' or 'a strong *prima facie* case' in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried." "It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."

The procedure in the application of the principle in *American Cyanamid's case*[5] is fairly summarised by Sir John Pennycuick in *Fellowes* v. *Fisher*[6] at p. 843 as follows: —

"(1) Provided that the court is satisfied that there is a serious question to be tried, there is no rule that the party seeking an interlocutory injunction must show a *prima facie* case.

(2) The court must consider whether the balance of convenience lies in favour of granting or refusing interlocutory relief.

(3) 'As to that' the court should first consider whether, if the plaintiff succeeds, he would be adequately compensated by damages for the loss sustained between the application and the trial, in which case no interlocutory injunction should normally be granted.

(4) If damages would not provide an adequate remedy the court should then consider whether if the plaintiff fails the defendant would be adequately compensated under the plaintiff's undertaking in damages, in which case there would be no reason on this ground to refuse an interlocutory injunction.

(5) Then one goes on to consider all other matters relevant to the balance of convenience, an important factor in the balance, should this otherwise be even, being preservation of the status quo. By the expression 'status quo' I understand to be meant the position prevailing when the defendant embarked on the activity sought to be restrained. Different considerations might apply if the plaintiff delays unduly his application for relief.

(6) Finally, and apparently only when the balance still appears even, 'it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence."

In the present case, I have earlier expressed my view that the affidavits filed by the plaintiff disclosed a clear case of libel. There was therefore, a serious question to be tried and to justify the court's interference there must be that consideration of whether the balance of convenience lies in favour of granting or refusing interlocutory relief. In considering where this balance lies in this case, the first question to be asked is, if the plaintiff succeeds at the trial would he be adequately compensated by damages for any loss caused by the refusal to grant this relief? In my belief if these publications were repeatedly published by the defendants which they have done even during the interval of this proceeding, they may cause greater injury to the plaintiff's name and profession and if at the trial of the action the plaintiff's denial were to be true and the defendant's allegation were proved to be false, an irreparable injury would have been done to the plaintiff. Damages for this injury, in my belief, would not be an adequate remedy to the plaintiff.

The next question is whether the defendants would be adequately compensated under the plaintiff's undertaking as to damages. In my view, if this injunction is granted, it will not prevent the defendants from making other legitimate statements or publications against the plaintiff; it will only prevent them from repeating these particular allegations in which the injunction is sought. Even if at the trial of the action the defendants should be able to adduce evidence showing that the plaintiff's denial of those allegation were untrue, it is impossible to believe that the defendants would suffer damages by being restrained meanwhile from repeating those allegations.

From these factors it would appear that the balance of convenience lies in favour of granting the interlocutory relief sought by the plaintiff. In my judgment, both motions should therefore be granted.

I order that both motions granted in terms until trial or further order. Cost to be in the cause.

*Motions granted.*

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## PROBATE OFFICER, SARIKEI v. SIDANG ANAK UDIN & ORS.

**[O.C.J. (Tan Chiaw Thong J.) August 19, 1976]**

**[Sibu — Originating Summons No. 28 of 1972]**

*Customary Law — Distribution of estate of Iban dying intestate — Punas inheritance — Distribution of "barang lama" and "barang bahru."*

In this case the applicant applied for distribution of the estate of the late Penghulu Andok Anak Mut (deceased). The deceased left immoveable properties and a shot gun and other household belongings. He died *punas* without leaving issue and the persons who claimed shares in the inheritance were —

(a) the first respondent, his widow;

(b) the second and third respondents who claimed to be the lawful brothers of the deceased;

(c) the fourth respondent who claimed to be a natural son of the deceased;

(d) the fifth respondent who claimed to be an adopted daughter of the deceased.

The first respondent had two sons by her previous marriage which was dissolved according to Iban custom prior to her marriage to the deceased. On the facts the learned trial judge found that the fourth respondent was the natural son of the deceased and that the fifth respondent was the adopted daughter of the deceased. He also found that of the land belonging to the deceased, two parcels were "barang lama" that were acquired by him before his marriage to the first respondent and that two parcels were "barang bahru" that were acquired after the marriage. He further found that the shot gun and other household belongings were "barang bahru."

**Held:** (1) the two parcels of land, being barang lama, should be inherited by the fourth and fifth respondents, the natural and the adopted children of the deceased in equal shares;

(2) that the barang bahru was acquired by the deceased during the subsistence of his marriage with the first respondent; that after his marriage with the first respondent, the deceased was staying with her and his stepsons in the same bilek until his death; and that all of them had been working in the two parcels of land comprised in the "barang bahru" until the death of the deceased;

(3) that one half of the "barang bahru" should be inherited and be vested in the first respondent, the widow, and the other half be inherited by and be vested in the step-sons in equal shares.

*Cases referred to:-*

(1) *Indun anak Ugu* v. *Dendang anak Saing* [1953] S.C.R. 37.

(2) *Egah anak Igu* v. *Juggol anak Jegung* [1953] S.C.R. 55.

ORIGINATING SUMMONS.

*Abdul Hamid Mohamed Yusof* (Cadet Legal Officer) standing in for *Denis Ong* (Asst. State Attorney-General) for the applicant.

*Joseph Tang* for the 1st respondent.

3rd respondent in person; 4th & 5th respondents not appearing.

**Tan Chiaw Thong J.:** In this action the Probate Officer, Sarikei as administrator of the estate of the late Penghulu Andok anak Mut (deceased) applies for the distribution of the following properties comprised in the said estate in the following manner: —

(a) A parcel of land known as Lot 205 Block 138 Sarikei Land District comprising 11.32 acres to be distributed by giving ¼ share each to the following persons:—
   (i) Sidang anak Udin (f), widow of the said deceased.
   (ii) Jalang anak Ah Chong, stepson of the said deceased.
   (iii) Sandom anak Ah Chong, stepson of the said deceased.
   (iv) Garah anak Mut and Rabai anak Mut jointly, these two persons being the brother and sister of the whole blood of the said deceased.

(b) A parcel of land known as Lot 80 Block 137 Sarikei Land District comprising 1.45 acres to be distributed as in (a) above.

(c) A parcel of land known as Lot 271 Block 138 Sarikei Land District comprising 5.21 acres to be given to Remais anak Adok, adopted daughter of the said deceased by a previous marriage.

(d) A parcel of land known as Lot 94 Block 153 Sarikei Land District comprising 3.27 acres to be distributed as in (c) above.

It has been agreed among all parties that the late Penghulu Andok anak Mut died intestate on the 4th day of June, 1971 at Sarikei, leaving the above immovable properties as well as one SBBL shotgun (12-bore No. BTR-6-2958 "Champion") held under Licence No. SDC 2879 and other household belongings. In his affidavit in support of the application, the Probate Officer, Sarikei submitted that this shotgun and other household belongings should be distributed in the same manner as in (a) above.

The first respondent Sidang anak Udin (f) claims the properties specified in (a) & (b) above as well as the other movable properties on the ground that she was the widow of the deceased at the time of his death and that the parcels of land in items (a) and (b) belonged to her as having been inherited by her from her ancestors before her marriage to the deceased and before the issue of titles thereto; and further, that the properties were acquired by the deceased and her after she married the deceased. During the course of the hearing of this action, the second respondent died. The third respondent claims a share in the properties of the deceased on the ground that the latter was his brother who had died without any children. The fourth respondent claims a share in the properties of the deceased on the ground that he is the natural son of the deceased. The fifth respondent makes the same claim on the ground that she is the adopted daughter of the deceased.

The following are additional facts agreed by the parties:—

(a) The first respondent has two sons, namely, Jalang and Sandom anak Ah Chong by her previous marriage which was dissolved according to Iban custom prior to her marriage to the deceased.

(b) The third respondent is a brother of the whole blood of the deceased.

(c) The fifth respondent is the adopted daughter of the deceased and a previous wife Rinta. The adoption was made in accordance with Gawai Beiru anak.

The allegation of the fourth respondent that he is the natural son of the deceased by a previous marriage, namely, that between the deceased and Rinta, is disputed by the first respondent who alleged that the fourth respondent is the stepson of the deceased by the latter's previous marriage to Rinta which has been dissolved according to Iban custom before the latter's marriage to the first respondent. The first respondent further alleged that the fourth respondent is the natural son of Rinta and Malling, both of whom are deceased. In this connection apart from the evidence of Tuai Rumah Chawan anak Nyuak (D.W.9) called by the first respondent who stated that as far as he knew, the fourth respondent is the son of Rinta and Malling, there is no evidence supporting this allegation. D.W.9 said that he did not know Malling personally and he gave no basis for his alleged knowledge that the fourth respondent is the son of Rinta and Malling. As such therefore it is not safe to act on his evidence as proof of the alleged fact that the fourth respondent is the son of Rinta and Malling as alleged by the first respondent. On the evidence, I find that the first respondent has not succeeded in proving on a balance of probabilities that the fourth respondent is the son of Rinta and Malling. On the other hand, the third respondent Garah anak Mut (D.W.3) testified that the fourth respondent is the natural son of the deceased and Rinta. It is true that he gave no basis for his knowledge but it should be borne in mind that the third respondent is the brother of the whole blood of the deceased and his admission in the circumstances should not be taken lightly. On the evidence therefore I find that it is probable that the fourth respondent is the natural son of the deceased and Rinta. The fourth respondent has admitted that the marriage between the deceased and Rinta was dissolved.

The first respondent also alleged that she had been married to the deceased for more than 15 years before his death and since the marriage they had stayed together in the same bilek in Rh. Sandom until the death of the deceased. The fourth respondent disputes this. He alleged that the marriage was dissolved before the death of the deceased. On the evidence I find that the allegation of the fourth respondent is without substance. He has called no evidence to support his allegation. The witnesses called by the third respondent did not support this allegation. The evidence of the two witnesses Tuai Rumah Balong anak Batu (D.W.4) and Tuai Rumah Nanang anak Baroh (D.W.5), on the contrary, clearly shows that the deceased and the first respondent had never been divorced. On the other hand, the evidence of the first respondent and that of her son Sandom anak Ah Chong (D.W.2) quite clearly shows that the deceased and the first respondent were married in Church on January 31, 1961 as evidenced by Ex. D1. This is not disputed. Further, the evidence of the first respondent and D.W.2 also shows that before the Christian marriage the deceased and the first respondent were married in accordance with Iban custom. The first respondent said that this marriage took place about a year before the Christian marriage whereas D.W.2 stated that this marriage took place some 20 years ago. I do not consider that the discrepancy on this point between the evidence of the first respondent and D.W.2 has the effect of affecting their credibility as witnesses on other matters contained in their evidence. In any event, the evidence clearly shows that the first respondent and the deceased had been married for more than 10 years before his death. The evidence of the first respondent and D.W.2 also shows that since that marriage, the deceased had been staying with the first respondent in the same bilek until the death of the deceased, together with D.W.2 and his family as well as the family of the brother of D.W.2, Jalang anak Ah Chong. I find this as a fact on the evidence as accepted by me.

The applicant called Penghulu Ghani anak Sat (P.W.2) as an expert witness. This witness is a Penghulu of some 25 years standing and his area of jurisdiction covers Sg. Nyelong. He testified that he was familiar with the Iban customs on divorce and inheritance in the Sarikei district. He had often appeared in native courts as an expert witness on Iban customary law in Sarikei and his evidence had been accepted. I accept this witness as an expert witness on Iban customary law in Sarikei including Iban customary law on divorce and inheritance. He explained the distinction between what properties are comprised in the "barang lama" and in the "barang bahru" under Iban customary law in Sarikei. It is common ground that among the immovable properties of the deceased at the time of his death, the two parcels of land specified as items (c) and (d) in paragraph 1 above are "barang lama" in the estate of the deceased. The first respondent and her children are not laying any claim to any share in these "barang lama" and neither is the third respondent. According to the evidence of P.W.2, the first respondent has no rights over the "barang lama" and neither has the third respondent. On the evidence of P.W.2, I find that, it being common ground that at the time of the deceased's death, his first widow, namely Rinta had also died, the "barang lama" of the deceased falls to be inherited by the natural and adopted children of the marriage between the deceased and Rinta — in this particular case, the fourth and fifth respondents. P.W.2 also said that such children should get equal shares in the "barang lama" on the deceased's death. I accept his evidence on the point. Accordingly, I hold and order that the "barang lama" concerned in this action, namely,

(a) That parcel of land known as Lot 271 Block 138 Sarikei Land District comprising 5.21 acres more or less; and

(b) That parcel of land known as Lot 94 Block 153 Sarikei Land District comprising 3.27 acres more or less,

shall be inherited by and vested in the fourth and fifth respondents in equal shares.

I now come to the other properties concerned in this action. On the evidence it is clear and I find as a fact that the following immovable and movable properties of the deceased at the time of his death constitute "barang bahru" under Iban customary law applicable in Sarikei:—

(a) That parcel of land known as Lot 205 Block 138 Sarikei Land District comprising 11.32 acres more or less.

(b) That parcel of land known as Lot 80 Block 137 Sarikei Land District comprising 1.45 acres more or less.

(c) One SBBL shotgun (12-bore No. BTR-6-2958 "Champion") held under Licence No. SDC 2879 and other household belongings.

In coming to this finding of fact, I have taken into consideration the facts as contained in the agreed documents Exs. P1, P2, P6 and P7. Exs. P1 and P2 show the history pertaining to the acquisition and registration of the two parcels of land concerned in the name of the deceased and Ex. P6 clearly shows that the shotgun concerned was acquired by the deceased during the subsistence of his marriage with the first respondent. The fourth respondent has made the point that the shotgun concerned was acquired by an exchange by the deceased of a double-barrelled shotgun previously owned by the deceased with the previous owner of the shotgun concerned who had to pay the deceased $180. In my judgment, even if that were so, the fact remains that the shotgun concerned was acquired by the deceased when he was married and living together with the first respondent and as such, I find that the shotgun concerned is included amongst the "barang bahru" of the deceased.

I accept the evidence of the first respondent and D.W.2 that after the marriage of the deceased and the first respondent, they had been staying together in one bilek with D.W.2 and his family and the younger brother of D.W.2, Jalang anak Ah Chong and his family until the death of the deceased. I have found this as a fact. I further accept the evidence of the first respondent and D.W.2 that all of them were concerned in working and improving the two parcels of land which I had found to form part of the "barang bahru" of the estate of the deceased. The fifth respondent is also laying claim to a share in the "barang bahru" on the ground that she also played a part in working

on and the improvement of the two parcels of land. However, in cross-examination, she stated that she never stayed with the deceased and the first respondent but she did visit them.

Penghulu Ghani anak Sat (P.W.2) in his expert evidence said that only children of a previous marriage natural or adopted who had worked all the time in the "barang bahru" would have a share in the said property, although not staying in the same "bilek" as the deceased. He added that a natural child of the deceased by a previous dissolved marriage who did not work in the "barang bahru" and did not stay together with the deceased would not be entitled to any share in the "barang bahru". The fifth respondent has admitted that she never stayed with the deceased and the first respondent but only visited them. Hence, although she stated that she had worked in the land comprised in the "barang bahru" by helping the deceased and the first respondent to weed the grass there, I do not find on her evidence that she has shown that it was probable that she had been working on the two parcels of land concerned all the time. Hence, I find that she does not qualify for a share in the "barang bahru". It is common ground that the fourth respondent had never after the marriage took place between the deceased and the first respondent stayed together with them nor worked in any of the two parcels of land comprised in the "barang bahru". Hence, I also find that he is not entitled to any share in these lands in the "barang bahru".

I have found as facts on the evidence as accepted by me that the "barang bahru" were acquired by the deceased during the subsistence of his marriage with the first respondent; that after his marriage with the first respondent, the deceased was staying together with her and his stepsons D.W.2 and Jalang in the same bilek until his death; and that all of them had been working in the two parcels of land comprised in the "barang bahru" until the death of the deceased. On the evidence of Penghulu Ghani anak Sat (P.W.2), the first respondent, D.W.2 and Jalang would clearly be entitled each to have a share in the "barang bahru". This view would appear to be supported by the case of *Indun (f) anak Ugu* v. *Dendang anak Saing*.[1] In that case a Sea Dayak, Nuli, died *punas* leaving surviving him a widow, a child by a previous marriage which had been dissolved, and two sisters. It was held, *inter alia*, that (a) The "barang bahru" belonged equally to all persons, including Nuli himself and his infant child living in his "bilek" at the time of his death. (b) Nuli's own share of the "barang bahru", amounting in this case to a one-fifth share, would normally pass to his widow for the purpose of erecting a monument to him, but as in this case she had erected no monument and had, in fact, married again, that share fell for distribution between his two sisters. It is to be noted that that case would appear to concern rights of inheritance in the Binatang district and since the decision in that case there has come into force on October 1, 1955 the Tusun Tunggu covering the whole of the former Third Division which comprised the present Sixth Division the capital of which is Sarikei. By the Tusun Tunggu (Third Division) Order (Vol. VII (1958) Revised Edition of the Laws, page 583) the Tusun Tunggu (Dayak version) was declared to be the native customary law for all Iban communities of the Third Division and for all such other persons, cases and suits to which, in accordance with the Native Courts Ordinance, or by virtue of any other written law, it may lawfully be applied. That Order also stipulates that the English version of the Tusun Tunggu may also be used and referred to and that in the case of any conflict between the Dayak version of the Tusun Tunggu which is the authorized version and the English translation thereof, the former shall prevail. Under Appendix A to the English translation of the Tusun Tunggu at page 635 Vol. VII of the 1958 Revised Edition of the Laws, it is stated, *inter alia*, that: —

"A widower or widow is only entitled to property obtained jointly during the marriage, and only to a half share of the deceased property, if she or he, removes home or re-marries and does not continue to keep the 'bilek' in existence.

If the deceased leaves a child or children but no widower or widow, all the estate (real or personal property) shall be inherited by such child or children. If such child or children are still minors, then the property will be held in trust for such child or children.

If the deceased is 'punas' then the rights of the following next-of-kin to inherit the residuary estate, shall be considered in the following order: —

(a) Parents of the deceased.

(b) Brothers and sisters (whole blood) of the deceased.

(c) Nephews and nieces (whole blood) of the deceased.

(d) Brothers and sisters of half blood."

Learned counsel for the first respondent has submitted that on the authority of the above quoted passages and the decision of *Indun (f) anak Ugu's case, supra*, the "barang bahru" of the deceased should be distributed equally amongst the persons living in the same "bilek" as the deceased including the deceased at the time of his death and further, that the deceased's share in this instance should be inherited by the wife, provided she did not re-marry and continued staying in the same "bilek" after his death. The evidence of P.W.2 shows that if the husband of a marriage dies without leaving any issue of that marriage, he is considered to have died "punas". In the *Indun (f) anak Ugu's* case, Blagden Ag. J. in the course of his judgment at page 38 held, *inter alia*, as follows: —

"In my view the Dayak custom where a husband dies punas is that his widow takes his share of the barang bahru provided she stays on in the bilek and does not re-marry.

The real object of her receiving that share is that she shall use it in erecting a monument to her deceased husband. If she does that his heirs and relatives will have no claim on that share, even if she subsequently re-marries. But if she does not do that, and if she subsequently re-marries or leaves the bilek, then her husband's heirs and relatives are entitled to claim her husband's share of the barang bahru."

In the same judgment, the learned judge also held that where under Dayak custom a husband dies "punas", all persons living in the same "bilek" as the deceased at the time of his death are entitled to a share in the "barang bahru" acquired during the time when they were all living together (paragraph 2 at page 38). In that action, it was decided, *inter alia*, that the sisters of the whole blood of the deceased were entitled jointly to a one-fifth share in the "barang bahru" of the deceased because the deceased's share in the "barang bahru" had not been utilised by his widow, the defendant, to erect a monument to her deceased husband *and* that she had subsequently remarried. It would appear from the judgment that had the

defendant not remarried, her late husband's share would have reverted to her instead of the sisters of the deceased. I have not lost sight of the fact that the Tusun Tunggu (Third Division) Order came into force after the decision in the *Indun (f) anak Ugu's* case and that when that case was decided, the Tusun Tunggu was not in operation in the then Third Division covering Sarikei. However, I find that this decision does not appear to be at variance with the passages which I have earlier quoted from the English translation of the Tusun Tunggu. It is true that in his evidence Penghulu Ghani anak Sat has stated that brothers and sisters of the whole blood of the deceased would be entitled to a share in the "barang bahru" of the deceased but he subsequently modified his evidence on the point and agreed with the decision in the *Indun (f) anak Ugu's* case relating to the distribution of the "barang bahru" of the deceased. Hence, in the light of the modification to his evidence, provided that after the death of the deceased here, his widow did not re-marry and continued to stay in the same bilek, which is the case here, then brothers and sisters of the whole blood of the deceased are not entitled to his share in the "barang bahru". Tuai Rumah Chawan anak Nyuak (DW9) called by the first respondent as an expert witness has testified *inter alia* that the estate of the deceased would have no share in the "barang bahru" as the deceased is dead but I find that his evidence on the point conflicts with the decision of the *Indun (f) anak Ugu's* case as well as the evidence of Penghulu Ghani anak Sat (PW2) as modified by him. Hence, I cannot accept his evidence on the point.

DW9 also said that a natural son and adopted children by a previous marriage of the deceased would have no share in the "barang bahru" of the deceased. This is not at variance with the evidence of PW2 save that the latter stated that any such children would have a share in the "barang bahru" only if they had worked all the time together with the deceased in the "barang bahru". DW9 also stated that if a daughter of the first marriage helped in working the "barang bahru" only once in a while whilst staying elsewhere, she would have no share in the "barang bahru". She would only have a share if she was working in the "barang bahru" with the deceased and was staying in the deceased's bilek as well. I find that his evidence does not conflict with the evidence of PW2 on this point. but I prefer and accept the evidence of PW2. Be that as it may, the evidence of DW9 would appear to support the conclusion that in the circumstances of this case, the fifth respondent does not qualify for a share in the "barang bahru" of the deceased. If any further authority is required for this view, reference may be made to the case of *Egah anak Igu* v. *Inggol anak Jegong*.[2] I find on the evidence, that the fourth and fifth respondents are not entitled to any share in the "barang bahru".

Learned counsel for the first respondent supported by learned counsel for the applicant has submitted that the third respondent does not qualify for a share in the "barang bahru" of the deceased in accordance with the relevant Iban customary law. I accept the evidence as modified of PW2 on the method of distribution of the "barang bahru" of the estate of the deceased in accordance with the Iban customary law in Sarikei and I have also found that the decision in the *Indun (f) anak Ugu's* case, *supra* does not appear to conflict with the relevant passages quoted above from the translation of the Tusun Tunggu applicable to Sarikei. I find that in the circumstances and on the applicable customary law, the third respondent does not qualify for a share in the "barang bahru" of the deceased and that such "barang bahru" should be distributed as follows: one-half share (including the deceased's share) to the first respondent, and the other half share to be shared equally between Sandom anak Achong (DW2) and Jalang anak Achong and I so order.

In the result, I order that in respect of the "barang lama" of the deceased, namely, (a) that parcel of land known as Lot 271 Block 138 Sarikei Land District comprising 5.21 acres more or less; and (b) that parcel of land known as Lot 94 Block 153 Sarikei Land District comprising 3.27 acres more or less, shall be inherited by and vested in the fourth and fifth respondents in equal shares. One-half of the "barang bahru", namely, (a) that parcel of land known as Lot 205 Block 138 Sarikei Land District comprising 11.32 acres; (b) that parcel of land known as Lot 80 Block 137 Sarikei Land District comprising 1.45 acres; and (c) one SBBL shotgun (12-bore No. BTR-6-2958 "Champion") and household belongings shall be inherited by and vested in the first respondent. and the other half shall be inherited by and vested in Sandom and Jalang in equal shares. As to the actual distribution, I shall leave it to the Probate Officer, Sarikei and if there is any difficulty, no doubt the assistance of the relevant Penghulu may be enlisted.

As to costs, I order that each party shall bear his or her own costs. This has not been objected to by the parties. I consider that in the circumstances, particularly having regard to the value of the estate of the deceased, which is not considerable, that this is the fairest order to make.

*Order accordingly.*

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## PUBLIC PROSECUTOR v. MOHAMED KASSIM BIN YATIM

**[A.Cr.J. (Hashim Yeop A. Sani J.) September 10, 1976]**
**[Ipoh — Criminal Appeal No. 98 of 1975]**

*Criminal Law and Procedure — Respondent charged under s. 12(1)(d) of the Passports Act, 1966 — Signatures on application for passport alleged to be respondent's — Evidence of handwriting expert — Whether conclusive — Whether prima facie case made out at close of prosecution — Passports Act, 1966, s. 12(1)(d).*

*Evidence — Evidence of handwriting expert — Whether conclusive.*

In this case the Public Prosecutor appealed against the acquittal of the accused in respect of 3 charges under section 12(1)(d) of the Passports Act, 1966. That section provides that any person who with intent to obtain for himself or any other person a passport or other travel document knowingly makes any false statement which to his knowledge is false in any material particular shall be guilty of an offence punishable under that section. The charges were that the accused knowingly made false statements separately on the application forms of W., L. & M. respectively to the effect that he had known these applicants for a certain number of years and signed against those statements with the name "Mohd. Kassim bin Yatim, P.J.K." The court was told that it had been the